

RONALD H. VOWELL ET AL.

IBLA 84-306

Decided June 25, 1985

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring mining claims abandoned and void. U MC 181973 through U MC 182022.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

BLM may properly declare an unpatented mining claim abandoned and void pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), where the claimant failed to file either evidence of annual assessment work or a notice of intention to hold the claim for 1982 prior to Dec. 31, 1982.

APPEARANCES: Ronald H. Vowell, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ronald H. Vowell and others have appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated January 31, 1984, declaring various mining claims, U MC 181973 through U MC 182022, abandoned and void. 1/ The basis for the decision was appellants' failure to file with BLM either evidence of annual assessment work or notice of intention to hold the

1/ The other appellants are Hollie Vowell and Tom Vowell and the names of the claims are: Dixie Nos. 1 through 8, Dora Nos. 1 NE, 2 NE, 4 NE, 6 NE, 8 NE, 3 W, 6 W, 7 W, 8 W, 9 W, 3 SE, 5 SE, 7 SE, 9 SE, 2 E, 4 E, 5 E, Jackson Nos. 1 through 8, and Ron Tom Nos. 1 through 17. Hollie Vowell and Duke Sober were the co-locators of the mining claims serialized as U MC 181973 through U MC 182005. Ronald H. Vowell and Tom Vowell were the co-locators of the mining claims serialized as U MC 182006 through U MC 182022.

claims for 1982, pursuant to section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982). 2/

Appellants' mining claims were located between April 6 and July 19, 1967, in San Juan County, Utah, and recorded with BLM on October 19, 1979, pursuant to sec. 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982). The record contains affidavits of assessment work filed timely with respect to every year between 1980 and 1983, with the exception of 1982.

In their statement of reasons for appeal, appellants state that they do not dispute the fact that the affidavits were "not filed with [BLM] at the proper time," but argue there was no intention to abandon the claims and the failure to file was justified. Appellants explain that, at the time the affidavits were to be filed, Ronald H. Vowell, who apparently was primarily responsible for filing the affidavits, was incapacitated due to a stroke and "thought" the affidavits had been filed with BLM. Appellants submit copies of affidavits of assessment work for 1982 filed with the San Juan County recorder on September 14, 1982.

[1] Section 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to October 21, 1976, to file with BLM either evidence of annual assessment work or a notice of intention to hold the claim "prior to December 31" of each calendar year following the date of first recording such an instrument with BLM. Harvey A. Clifton, 60 IBLA 29 (1981). Thus, with respect to 1982, appellants were required to file with BLM an appropriate instrument "prior to" December 31, 1982. The record establishes that appellants failed to file timely.

Failure to file the required instrument in accordance with the statute "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." 43 U.S.C. § 1744(c) (1982). In such circumstances, the claim is thereby rendered "void." 43 CFR 3833.4(a).

We have long held that the statute is self-operative and that Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Homestake Mining Co., 77 IBLA 235 (1983), and cases cited therein. Moreover, in Homestake, we reiterated the holding that because the statute provides for a conclusive presumption of abandonment upon the failure to comply with the statutory filing requirement, the Department does not have the authority to consider whether a claimant in fact intended to abandon the affected claim under the common law rules on abandonment. This holding was recently affirmed in United States v. Locke, supra at 1795-1796. Thus, it is irrelevant whether appellants intended to abandon the claims involved herein.

2/ Consideration of this appeal was stayed pending judicial review of the mining claim recordation provisions of FLPMA. The constitutionality of these provisions was recently upheld by the Supreme Court. United States v. Locke, 105 S. Ct. 1785 (1985).

We conclude BLM properly declared appellants' mining claims abandoned and void for failure to comply with the annual filing requirement set forth at 43 U.S.C. § 1744(a) (1982). Robert W. Hughes, 76 IBLA 99 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge

